

# INDIANA DEPARTMENT OF STATE REVENUE

## Revenue Ruling # 2002-01ST

January 23, 2002

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### ISSUE

State Retail Sales/Use Tax - Application of State Retail Sales/Use Tax on Service Contracts

Authority: IC 6-2.5-4-1, 45 IAC 2.2-4-2, Sales Tax Information Bulletin #2

The taxpayer requests the Department to rule whether or not the taxpayer can collect retail sales tax on the sale of maintenance agreements for office equipment.

### STATEMENT OF FACTS

The taxpayer is engaged in the retail sale of copiers, copier equipment and supplies throughout Indiana and the Midwest. The taxpayer also sells maintenance and supply contracts to customers who have leased or purchased copiers. The taxpayer offers three types of maintenance contracts – “Standard,” “Full Service” and “Comprehensive.” “Standard” maintenance agreements include all labor and repair parts, excluding the copier drum/photoconductor. The “Full Service” agreement includes labor, repair parts and the copier drum/photoconductor. The “Comprehensive” maintenance agreement includes all labor, all repair parts (including the drum/photoconductor), and supplies. All maintenance agreements include provisions for periodic inspection and interim maintenance activities where tangible personal property may be supplied to the customer.

The taxpayer was audited by the Indiana Department of Revenue in 1995 and was advised that for years after 1994, the taxpayer should self-assess use tax on all parts and supplies removed from its inventory for the purpose of fulfilling its obligations under its “Comprehensive” maintenance agreements. As a result of this, the taxpayer has paid use tax on all parts and supplies provided to customers under all maintenance contracts since 1995. No sales tax is collected on any of the maintenance agreements at the current time.

The taxpayer states that there is a virtual certainty that parts and supplies will be provided to all “Standard,” “Full Service” and “Comprehensive” maintenance agreement customers on a periodic basis. During the ten-month period ending October 30, 2001, maintenance agreement revenues and the cost of parts and supplies sold to customers were as follows:

All maintenance agreement revenue	2,490,359
Cost of parts provided pursuant to maintenance agreements	696,417
Cost of supplies provided pursuant to maintenance agreements	729,239
Percentage of parts and supplies to revenue	57.25%

### **DISCUSSION**

IC 6-2.5-4-1(a) provides that “a person is a retail merchant making a retail transaction when he engages in selling at retail.” Section 1(a) further provides that “a person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he (1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration.” Based upon that statute, the taxpayer is not a “retail merchant making a retail transaction” when selling service contracts for office equipment.

45 IAC 2.2-4-2 states that services are not subject to gross retail tax. The second part of that regulation (see paragraph below) does not apply to the “Standard” or “Full Service” contracts because we do not necessarily have a transfer of personal property. Thus, it is necessary to apply the Sales Tax Information Bulletin #2, which provides detailed guidelines on the applicability of sales/use tax to warranties and maintenance contracts. That Bulletin provides that “[o]ptional warranties and maintenance agreements that only contain the intangible right to have property supplied and there is no certainty that property will be supplied are not subject to sales tax. Any parts or tangible personal property supplied pursuant to this type of agreement are subject to use tax.” Because there is no certainty that property will be supplied in either the “Standard” or the “Full Service” maintenance contract agreements, the parts used in conjunction with such remain subject to use tax.

However, this is not the case with the “Comprehensive” maintenance contract where all labor, repair parts, and supplies are included. Because a transfer of personal property is assured under the “Comprehensive” maintenance agreement, it is necessary to apply the remaining sections of 45 IAC 2.2-4-2. 45 IAC 2.2-4-2(a) provides that when there is a transfer of “tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

- (1) the serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property
- (2) the tangible personal property purchased is used or consumed as a necessary incident to the service
- (3) the price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and
- (4) the serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.”

The taxpayer does not satisfy the third exception where the cost of supplies (only available in the “Comprehensive” agreement) provided to the customer exceeds the 10% limitation. Because the taxpayer does not meet the four exceptions, the taxpayer may collect retail sales tax on the “Comprehensive” agreement only.

### **RULING**

The Department rules that the sale of the “Comprehensive” contracts are subject to state retail sales tax while the taxpayer needs to continue to assess use tax on tangible personal property used to satisfy the “Standard” and “Full Service” maintenance agreements.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, changes in statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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